IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

WP(C).No. 20124 of 2005(U)

PETITIONER:

POCKER SAHIB MEMORIAL ORPHANAGE
COLLEGE, TIRURANGADY, MALAPPURAM DISTRICT,
REPRESENTED BY ITS MANAGER.

BY ADV. SRI.V.M.KURIAN
SRI.A.V.THOMAS
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

RESPONDENTS:
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1. THE GOVERNMENT OF KERALA, REP. BY
THE SECREARY TO GOVERNMENT, HIGHER EDUCATION
DEPARTMENT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF COLLEGIATE EDUCATION,
THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF COLLEGIATE
EDUCATION, KOZHIKODE.

BY GOVERNMENT PLEADER SMT. LAKSHMIRANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/03/2007, ALONG WITH WPC NO. 28031 OF 2005 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 20124/2005 U

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE AGREEMENT EXECUTED BY THE PETITIONER DT. 12/10/1972.

EXT.P2. COPY OF THE GOVT.ORDER DT. 30/12/83 CONTAINING REVISED PD RULES.

EXT.P3. COPY OF THE ORDER DT. 23/2/2002 REVISING THE SPECIAL FEE.

EXT.P4. COPY OF THE GO MS NO. 33/02/H.EDN DT. 11/4/2002.

EXT.P5. COPY OF THE GO DT. 2/7/2002.

EXT.P6. COPY OF THE CIRCULAR DT. 20/4/2005 ISSUED BY THE R2 ON THE DIRECTION OF THE GOVT.

ANNEXURE A: COPY OF THE JUDGMENT DT. 27/10/2004 IN OP NO. 13296/2003.

True copy

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A.K. BASHEER, J.

W.P.(C). NOS. 20124, 28031, 31070 OF 2005 & 9876 OF 2006

Dated this the 19th day of March, 2007

J U D G M E N T

The core issue, which has come up for consideration in these writ petitions is whether the Government is justified in directing the Private Aided Colleges to transfer the accumulated funds in P.D. Accounts in the name of Principal of such colleges to the Government account. By Circular dt. April 20, 2005, a copy of which is available on record as Ext.P6 in W.P.(C) No.20124/05, and by letter dt. September 20, 2005, a copy of which is available on record as Ext.P13 in W.P.(C) No.9876/06, it was ordered by the Director of Collegiate Education that all amounts lying in such accounts in the name of Principal of the institutions till the last date of the previous academic year shall be transferred to the Government Account. The said orders are under challenge in these writ petitions, which are at the instance of management and heads of such aided institutions.

2. A brief reference to the essential facts may be necessary to consider the question whether the above circular and letter issued by the Director of Collegiate Education are legally valid and unsustainable.

3. It is not in dispute that the Government of Kerala had entered into separate individual agreements, known as Direct Payment Agreement, with the managements of various aided colleges in the State. As regards the collection of fee, the following clauses were incorporated in the agreements. Ext.P1 is stated to be one such agreement entered into between the Government and the management of aided college in Malappuram district. Since the clauses in all the agreements are identical, the following clauses in Ext.P1 are being extracted hereunder for convenience.

> *"2 . The Educational Agency shall cause to collect through the Principal of the institution on or before the date prescribed according to the rules in each month the tuition fees prescribed and fines imposed on the students and remit all such amounts to the credit of the Government in the Treasury at Tirur in such manner as may be prescribed by the Government from time to time. The amounts collected on a day shall be remitted*

in the said Treasury within the next 4 working days.

3. The Educational Agency shall cause to collect from the students such special fees at such rates as may be prescribed by the University from time to time.

4. (i) The Educational Agency shall cause to remit all fee collections other than those mentioned in clauses 1 and 2 in the Treasury at Tirur in a separate account opened in the name of the Principal of the Institution. Such remittance shall be made within the next four working days after collection. The Principal shall be competent to draw money from this account and incur necessary expenditure on the items for which such fees were collected.

(ii) The special fee collected for a purpose shall be utlised only for the purpose for which it is intended and for no other purpose.

(iii) The special fee collected from the students of a college under the Educational Agency shall be utilised only for the purpose of that college and not for the purpose of any other college.

5. No fees other than those authorised under this agreement shall be collected from the students of the Institution."

4. It is pertinent to note that the Educational Agency has been given liberty to collect special fee from the

students at such rates that may be prescribed by the University from time to time. The special fee collected by the institution has to be remitted in a separate account to be opened in the name of the Principal of the institution. Clause 4(1) stipulates that the Principal shall be competent "to draw money from this account and incur necessary expenditure on the items for which such fees were collected" (Emphasis supplied). It is further provided in the agreement that "the special fee collected for a purpose shall be utilised only for the purpose for which it is intended and for no other purpose" and that the special fee collected from the students of a college under the Educational Agency shall be "utilised only for the purpose of that college and not for the purpose of any other college."

5. It appears that certain modifications were made in the matter of collection of registration fees, between the Government and the managements with which we are not concerned at this stage.

6. As mentioned earlier, the Director of Collegiate

Education issued Ext.P6 circular and Ext.P13 letter directing all Deputy Directors and Principals of Colleges to transfer the accumulated funds lying to the credit of the Principals of the institutions in their respective personal deposit accounts to the Government fund.

7. In the counter affidavit reference has been made to Article 282.5(D) of Kerala Financial Code Vol.I. It is contended that in terms of the above article, the accumulated unspent balance has to be refunded to Government Account. It is further contended that the Government is spending crores of rupees for running the aided private colleges in the State. Moreover, the management's major portion of the fee collected from the students can also be spend for the college. However, University Grants Commission's fund also were provided for financial help to the colleges for infra structural facilities. It is the case of the respondents that the Circular does not impose any restrictions on the Educational Agencies in using the current collections. What has been taken away is the

right to utilise the accumulated funds till March 2005. I am afraid the above unilateral view taken by the Government cannot be justified.

8. As mentioned earlier, the Government had entered into individual agreements with the management of aided colleges. The Clauses contained in the agreement will have to be respected by both sides. The Government could not have unilaterally issued a direction to the Director of collegiate education to issue a circular appropriating the accumulated funds to its fund without affording opportunity to the management concerned to be heard. Therefore, Ext.P6 circular shall not be enforced or implemented till a final decision is taken by the Government of course, after holding discussions with all the respective managements. Till such time a decision is taken and appropriate new clauses are incorporated in the agreement in modification of the existing ones, the directions contained in Ext.P6 shall be kept in abeyance.

9. Learned counsel for the petitioner in W.P.C. No.

20124/05 has invited my attention to the judgment rendered by a Division Bench of this Court in W.A. No.380/06. It is true that the Division Bench had confirmed the judgment of the learned Single Judge against which the above appeal was preferred. The issue in that case related to registration fee collected by aided colleges. It appears that the said fee is to be remitted to the treasury in a specified account. The Deputy Director of Education on receipt of instructions from the Directorate had ordered that the accumulated amounts of registration fee lying to the credit of the personal deposit account of the Principal of the colleges be transferred to the Government fund. The learned Single Judge took the view that such a decision could not have been taken by the Government in view of the agreement executed between the Government and the management. The learned Single Judge was particularly referring to the retrospectivity of the above order issued by the Directorate. The learned Single Judge held that the Government was not justified in giving retrospectivity to the above order. The said view taken by

the learned Single Judge was affirmed by the Division Bench in writ appeal mentioned above.

10. It is true that the Division Bench had referred to special fees in the judgment. Obviously, this appears to be a mistake because, registration fee was only one of the components of special fee and what the leaned Single Judge dealt with was only the transfer of accumulated registration fees. Anyhow, for the reasons stated in the judgment, I am satisfied that the decision rendered by the Division Bench in the Writ Appeal mentioned above may not have any application in the facts of this case. Similarly, the petitioner in W.P.C. No. 9876/06 has produced Ext.P13 in addition to Ext.P6 which is a subsequent order issued by the Secretary in the Department of Higher Secondary education.

In the above facts and circumstances, these writ petitions are disposed of with a direction that before enforcing Ext.P6 circular the Government shall hold discussions with the respective managements and take a decision in the matter with regard to the transfer of the

accumulated funds lying to the credit of the Principals of various aided colleges with whom the Government has entered into separate agreements. If the Government and the respective managements agree upon the appropriation of the accumulated funds, it will be open to the parties to incorporate such a clause in the addenda of the agreement, which may be executed between the parties. Till such time a decision is taken in the matter, Ext.P6 shall not be enforced. The Government shall take a decision in the matter as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

A.K. BASHEER, JUDGE

vps

KURIAN JOSEPH, JUDGE

OP NO.

JUDGMENT

21st DECEMBER, 2006